

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

BYRON JOE BEARD

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Case No. 4:03cr159(3)
(Judge Brown)

REPORT AND RECOMMENDATION **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 17, 2005 to determine whether Defendant violated his supervised release. Defendant was represented by Mark Perez. The Government was represented by Ernest Gonzalez.

On May 20, 2004, Defendant was sentenced by the Honorable Paul Brown to 12 months custody followed by a three year term of supervised release for the offense of Conspiracy to Fraudulently Use Access Devices. On June 16, 2004, Defendant completed his period of imprisonment and began service of his supervised term.

On February 1, 2005, the U.S. Probation Officer filed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated the following conditions: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or paraphernalia related to such substances, except as prescribed by a physician; and (3) Defendant shall participate in a program of testing and treatment for

drug abuse under the guidance and direction of the U.S. Probation Office until such time as Defendant is released from the program by the probation office.

The petition alleges that Defendant committed the following acts: (1) On September 17, 2004, Defendant submitted a urine specimen that tested positive for methamphetamine; (2) On October 1, 2004, Defendant submitted a urine specimen that tested positive for cocaine; (3) On December 21, 2004, December 30, 2004, and January 4, 2005, Defendant submitted urine specimens that tested positive for marijuana; and (4) Defendant failed to report for random urine specimen collection on July 1, 2004, November 12, 2004, December 20, 2004, January 10, 2005, and January 18, 2005.

Prior to the Government putting on its case, the Defendant entered a plea of true to the remaining violations. At the hearing, the Court recommended that Defendant's supervised release be revoked.

RECOMMENDATION

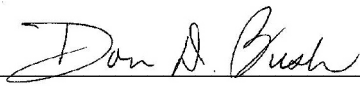
The Court recommends that the District Court revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that on March 4, 2005, Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with no supervised release to follow. The Court further recommends that Defendant complete a 500 hour drug rehabilitation program while in custody.

Within ten (10) days after receipt of the magistrate judge's report, any party

may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within ten days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 22nd day of February, 2005.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE